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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 5166 OF 2003

IN

FIRST APPEAL NO. 1916 OF 2003

Smt. Dr.Archana Parag Chumble ... Applicant

vs

Mangesh Shankar Chumble & ors ... Respondents

..

Mr.Mohan Pungalia for Applicant

Mr.P.N.Joshi for Respondent nos. 1 and 2.

..

CORAM : S.B.MHASE AND

R.S.MOHITE, JJ

DATE: 7TH SEPTEMBER, 2004

P.C.

1. Heard Mr. Joshi for the respondents. The applicant is the daughter-in-law of the respondent no. 1 and she is claiming share in the hjoint family property after the death of her husband. In one of the property, the trial Court has granted a share to the extent of 1/4th. However, in other properties share has not been granted. Learned counsel Mr. Joshi who appears for the respondents submits that the applicant has remarried after the death of the respondent no.1's son and that

the properties are separate properties and cannot be made available for partition and the trial Court is justified in refusing the decree. What we have noticed is that whether the properties are joint family property or not is a question. In order to establish that these properties are separate properties, the defendant no.1 has entered into the witness box. However, the applicant has not entered the witness box. Under these circumstances, whether burden has been discharged by the respondent no.1 is a questiion and if it is discharged, whether it was necessary for the plaintiff-applicant to enter into the witness box. This cannot be done unless the whole matter is heard and evidence is appreciated. These findings are questions of facts. However, during the pendency of the appeal, it is necessary to protect the property so as to be available in case the plaintiff-applicant succeeds. In view of the admitted relationship and allotment of share in one of the properties, we find that there is a prima facie case in favour of the applicant that in case she succeeds in appeal, she is likely to get a share in the property. So in order to preserve the property to be made available for execution, we find it necessary to maintain status quo and further to prohibit the respondent no. 1 from creating any third party interest in the said property. In view of this, the following order :

" Parties are hereby directed to maintain status quo as on today. The respondent no. 1 is hereby directed not to alienate, create any third party interest during the pendency of the suit and final disposal of this apeal. However, the respondent no. 1 is at liberty to file proper application in case there is absolute necessary for the benefit of the estate of the joint family or legal necessity to transfer or alienate the property. "

2. Civil Application disposed of.

(R.S.MOHITE, J) (S.B.MHASE, J)